

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.693 of 1995 (O&M)

Date of Decision: July 01, 2015

Employees State Insurance Corporation

.. Appellant

vs.

Manohar Lal

.. Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vikas Suri, Senior Standing Counsel for the appellant.

Mr. Hitesh Kumar Sammi, Advocate for respondent No.1.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh J.

Challenged in the present appeal is the order dated 14.12.1994 passed by the Commissioner under the Workmen's Compensation Act, 1923 (in short 'the Act'), Sonapat.

Briefly stated, the claimant (respondent herein) was stated to be working as mason with M/s Indo Asian Fuse Gears Ltd. As per claim petition, he was getting wages of ₹2,080/- per month. On 04.03.1992, he met with an accident while working in the establishment of the employer and received injury. He claimed compensation to the tune of ₹45,829/- before the commissioner. The present appellant did not appear and were proceeded against ex

parte. The Commissioner vide impugned order awarded compensation of ₹23,470.50 to be paid by the present appellant-Employees' State Insurance Corporation (in short 'the ESIC') being the insurer.

I have heard learned counsel for the parties and have also carefully gone through the case file.

The contention of learned counsel for the appellant is that before the Commissioner, a plea was taken by the respondent (appellant therein) that the dispute is covered under the Employee's State Insurance Act, 1948 (in short 'the ESI Act'). The plea was also taken that the Commissioner was not competent to hear the case. However, the Commissioner observed in the impugned order that there is nothing in the Act to show that a person governed by ESI is not entitled to obtain compensation under this Act. Therefore, the ESIC was taken to be the insurer and liability was fastened upon it.

Learned counsel for the appellant had drawn his attention towards Section 53 of the ESI Act, which provides as under:

“53. Bar against receiving or recovery of compensation or damages under any other law. - An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923, (8 of 1923) or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.”

This Section clearly shows that when ESI Act is applicable, the compensation cannot be claimed under any other Act. Therefore, the Commissioner apparently erred in passing the order against the ESIC while holding that the ESI Act is applicable to the establishment of the employer and that contribution for the same was paid.

Learned counsel for the appellant has further argued that even the ESI Act was not applicable qua the claimant. It has been argued that as per claim petition itself, the claimant was getting the salary of ₹2,080/- per month whereas as per Rule 50 of the Employee's State Insurance (Central) Rules 1950, the wage limit of coverage for the employees under the ESI Act were ₹1,600/- on the date of accident , as coming out from the Notification No.G.S.R. 368 (E), dated 27.03.1992 issued by the Ministry of Labour of Centre Government.

It has been further argued that the ESIC is neither the insurer nor at the same footing as insured. There is separate Employee's Insurance Act, 1948, which is a complete code in itself and governing the cases of employees covered under the said Act.

Faced with these situation, learned counsel for the claimant-respondent has stated that in case, if it is found that the claimant-respondent was not covered under the ESI Act then the liability should be fastened upon the employer.

Apparently, the ESIC cannot be sued under the Act. Therefore, the impugned order in this respect is illegal. Secondly, as

per the provision applicable at that time, the claimant-respondent was not covered under the ESI Act.

Therefore, in these circumstances, the ESIC is not liable to pay the compensation rather the employer is liable to pay the compensation.

In view of what has been discussed above, the impugned order dated 14.12.1994 is set aside qua the appellant-ESIC and it is ordered that the amount of compensation as determined by the Commissioner shall be paid by the employer-respondent.

Accordingly, the present appeal is allowed.

July 01, 2015
sarita

(KULDIP SINGH)
JUDGE